

### REMARKS

In the September 12, 2006 Office Action, claims 1-8 were allowed, claims 9, 10, 12-14, 19, 20, 22 and 24-26 were rejected in view of prior art, and claims 11, 15-18, 21 and 23 were indicated as containing allowable subject matter. No other objections or rejections were made in the Office Action.

#### *Status of Claims and Amendments*

In response to the September 12, 2006 Office Action, Applicants have amended claim 20 and canceled claim 21 as indicated above. Applicants wish to thank the Examiner for the indication of allowable subject matter and the thorough examination of this application. Thus, claims 1-20 and 22-26 are pending, with claims 1, 9, 14, and 20 being the only independent claims. Reexamination and reconsideration of the pending claims are respectfully requested in view of above amendments and the following comments.

#### *Rejections - 35 U.S.C. § 102*

In paragraphs 2-3 of the Office Action, claims 9, 10, 12-14 and 20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,977,483 to Greanias (hereinafter referred to as the Greanias patent).

#### **Independent claim 9**

Regarding independent claim 9, the Office Action states that the Greanias patent discloses a "packaging apparatus comprising: a measurer (32); a dispenser (44) downstream of the measurer (32); a check weigher (46); and a controller (36) that adjusts the quantity of additive supplied by the additive dispenser (44) such that the combined weight equals a predetermined amount (column 2 lines 51-61)". However, Applicants respectfully traverse this rejection.

Applicants respectfully note that claim 9 requires that the check measurer be arranged downstream of the flavoring apparatus. However, in the Greanias patent, the "check weigher" (the electric eye 46) is not arranged downstream of the "additive dispenser" (the accumulating hopper 44), but rather upstream thereof. For this reason alone, the Greanias does not anticipate claim 9 under 35 USC 102(b).

Furthermore, Applicants respectfully note that the check measurer recited in claim 9 measures the quantity of the flavored articles, which includes the weight of the articles and the flavoring added to the articles. However, the electric eye 46 simply cannot perform this task, because it is only measuring the quantity of "flavoring" (the additional product 38 being added to each package 22 in order to bring each package 22 up to its proper weight). Thus, the position of the electric eye 46 upstream of the accumulating hopper 44 renders the apparatus disclosed in the Greanias patent incapable of measuring the quantity of the "flavored articles".

Moreover, Applicants respectfully note that control means of claim 9 controls the predetermined quantity of the flavoring supplied by the flavoring apparatus based on the quantity of the flavored articles as measured by the check measurer and the quantity of the articles as measured by the measurer. However, the "control means" (the computer 36) in the Greanias patent does not perform this task. Rather, the computer 36 of the Greanias patent simply controls the amount of "flavoring" added in accordance with the amount of articles measured. Indeed, as noted above, the apparatus of the Greanias patent simply cannot perform this task if the electric eye 46 is upstream of the accumulating hopper 44.

It is well settled under U.S. patent law that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Therefore,

Applicants respectfully submit that independent claim 9 is not anticipated by the prior art of record. Withdrawal of this rejection is respectfully requested.

Moreover, Applicants believe that the dependent claims 10-13 are also allowable over the prior art of record in that they depend from independent claim 9 and therefore are allowable for the reasons stated above. Also, dependent claims 10-13 are further allowable because they include additional limitations. Thus, Applicants believe that since the prior art of record does not anticipate independent claim 9, neither does the prior art anticipate dependent claims 10-13.

**Independent claim 14**

Regarding independent claim 14, the Office Action states that the Greanias patent discloses a "packaging apparatus comprising: a weigher (32); an additive dispenser (44); a packaging machine (48) to which dispensed articles and additive are supplied (24, 26); a check weigher (46); and a controller (36) that adjusts the quantity of additive supplied by the additive dispenser (44) such that the combined weight equals a predetermined amount (column 2 lines 51-61)". However, Applicants respectfully traverse this rejection.

Applicants respectfully note that claim 14 requires that the weigher dispense a predetermined quantity of the articles. However, in the Greanias patent, the "weigher" (the scale 32) does not dispense articles to a predetermined quantity, and is used only to measure the weight of the underfilled packages 22. Therefore, it does not correspond to the weigher recited in claim 14, and for this reason alone, claim 14 is not anticipated by the Greanias patent under 35 USC 102(b).

Furthermore, for the reasons noted above with respect to claim 9, the Greanias reference cannot perform the same tasks as the check weigher and the controller recited in

claim 14 because the "check weigher" (the electric eye 46) is located upstream of the accumulating hopper 44.

It is well settled under U.S. patent law that for a reference to anticipate a claim, the reference must disclose each and every element of the claim within the reference. Therefore, Applicants respectfully submit that independent claim 14 is not anticipated by the prior art of record. Withdrawal of this rejection is respectfully requested.

Moreover, Applicants believe that the dependent claims 15-19 are also allowable over the prior art of record in that they depend from independent claim 14 and therefore are allowable for the reasons stated above. Also, dependent claims 15-19 are further allowable because they include additional limitations. Thus, Applicants believe that since the prior art of record does not anticipate independent claim 14, neither does the prior art anticipate dependent claims 15-19.

#### **Independent claim 20**

Independent claim 20 was rejected under 35 USC 102(b) as being anticipated by the Greanias patent. However, the Office Action further states that dependent claim 21 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Thus, Applicants have amended independent claim 20 with the content of dependent claim 21, and respectfully submit that amended claim 20 is now in condition for allowance.

#### ***Rejections - 35 U.S.C. § 103***

In paragraphs 4-5 of the Office Action, claim 19 was rejected under 35 U.S.C. §103(a) as being unpatentable over the Greanias patent in view of US Patent No. 4,074,507 to Ruf et al (hereinafter the "Ruf patent"), claim 22 was rejected under 35 U.S.C. §103(a) as

being unpatentable over the Greanias patent in view of US Patent No. 6,558,721 to Parsons et al (hereinafter the "Parsons patent"), and claims 24-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Greanias patent.

However, in view of the arguments advanced above, Applicants believe that dependent claims 19 and 22, 24-26 are allowable over the prior art of record in that they depend from independent claims 14 and 20, respectively, and therefore are allowable for the reasons stated above. Also, the dependent claims 19 and 22, 24-26 are further allowable because they include additional limitations. Thus, Applicants believe that since the prior art of record does not disclose or suggest the invention as set forth in independent claims 14 and 20, the prior art of record also fails to disclose or suggest the inventions as set forth in the dependent claims 19 and 22, 24-26.

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In view of the foregoing amendment and comments, Applicants respectfully assert that currently pending claims are now in condition for allowance. Reexamination and reconsideration of the pending claims are respectfully requested.

Respectfully submitted,

/Steven Roberts/

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Steven Roberts  
Reg. No. 39,346

Shinju Global IP  
c/o GLOBAL IP COUNSELORS, LLP  
1233 Twentieth Street, NW, Suite 700  
Washington, DC 20036  
(202)-293-0444